

**Subpart B—Definitions****§ 10.11 Scope of definitions.**

In addition and subject to definitions contained in applicable statutes and subsequent parts or sections of this subchapter B, words or their variants shall have the meanings ascribed in this subpart. Throughout this subchapter B words in the singular form shall include the plural, words in the plural form shall include the singular, and words in the masculine form shall include the feminine.

**§ 10.12 Definitions.**

*Aircraft* means any contrivance used for flight in the air.

*Amphibians* means a member of the class, Amphibia, including, but not limited to, frogs, toads, and salamanders; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

*Animal* means an organism of the animal kingdom, as distinguished from the plant kingdom; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

*Birds* means a member of the class, Aves; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

*Country of exportation* means the last country from which the animal was exported before importation into the United States.

*Country of origin* means the country where the animal was taken from the wild, or the country of natal origin of the animal.

*Crustacean* means a member of the class, Crustacea, including but not limited to, crayfish, lobsters, shrimps, crabs, barnacles, and some terrestrial forms; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a man-

ufactured product or in a processed food product.

*Director* means the Director of the United States Fish and Wildlife Service, Department of the Interior, or his authorized representative.

*Endangered wildlife* means any wildlife listed in § 17.11 or § 17.12 of this subchapter.

*Fish* means a member of any of the following classes:

(1) Cyclostomata, including, but not limited to, hagfishes and lampreys;

(2) Elasmobranchii, including but not limited to, sharks, skates, and rays; and

(3) Pisces, including but not limited to trout, perch, bass, minnows, and catfish; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

*Fish or wildlife* means any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and including any part, product, egg, or offspring thereof.

*Foreign commerce* includes, among other things, any transaction (1) between persons within one foreign country, or (2) between persons in two or more foreign countries, or (3) between a person within the United States and a person in one or more foreign countries, or (4) between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

*Fossil* means the remains of an animal of past geological ages which has been preserved in the earth's crust through mineralization of the object.

*Import* means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

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*Injurious Wildlife* means any wildlife for which a permit is required under subpart B of part 16 of this subchapter before being imported into or shipped between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any possession of the United States.

*Mammal* means a member of the class, Mammalia; including any part, product, egg, or offspring, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

*Migratory bird* means any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in §10.13, or which is a mutation or a hybrid of any such species, including any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof.

*Migratory game birds*: See §20.11 of this subchapter.

*Mollusk* means a member of the phylum, Mollusca, including but not limited to, snails, mussels, clams, oysters, scallops, abalone, squid, and octopuses; including any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

*Permit* means any document designated as a “permit,” “license,” “certificate,” or any other document issued by the Service to authorize, limit, or describe activity and signed by an authorized official of the Service.

*Person* means any individual, firm, corporation, association, partnership, club, or private body, any one or all, as the context requires.

*Plant* means any member of the plant kingdom, including seeds, roots and other parts thereof.

*Possession* means the detention and control, or the manual or ideal custody of anything which may be the subject of property, for one’s use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one’s place and name. Possession includes the act or state of

possessing and that condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons. Possession includes constructive possession which means not actual but assumed to exist, where one claims to hold by virtue of some title, without having actual custody.

*Public* as used in referring to museums, zoological parks, and scientific or educational institutions, refers to such as are open to the general public and are either established, maintained, and operated as a governmental service or are privately endowed and organized but not operated for profit.

*Reptile* means a member of the class, Reptilia, including but not limited to, turtles, snakes, lizards, crocodiles, and alligators; including any part, product, egg, or offspring thereof, or the dead body or parts thereof, whether or not included in a manufactured product or in a processed food product.

*Secretary* means the Secretary of the Interior or his authorized representative.

*Service* means the United States Fish and Wildlife Service, Department of the Interior.

*Shellfish* means an aquatic invertebrate animal having a shell, including, but not limited to, (a) an oyster, clam, or other mollusk; and (b) a lobster or other crustacean; or any part, product, egg, or offspring thereof, or the dead body or parts thereof (excluding fossils), whether or not included in a manufactured product or in a processed food product.

*State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, and Guam.

*Take* means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect. (With reference to marine mammals, see Part 18 of this subchapter.)

*Transportation* means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

*United States* means the several States of the United States of America,

District of Columbia, Commonwealth of Puerto Rico, American Samoa, U.S. Virgin Islands, Guam, Commonwealth of the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, Navassa Island, Palmyra Atoll, and Wake Atoll, and any other territory or possession under the jurisdiction of the United States.

*Whoever* means the same as person.

*Wildlife* means the same as fish or wildlife.

[38 FR 22015, Aug. 15, 1973, as amended at 42 FR 32377, June 24, 1977; 42 FR 59358, Nov. 16, 1977; 45 FR 56673, Aug. 25, 1980; 50 FR 52889, Dec. 26, 1985; 72 FR 48445, Aug. 23, 2007]

#### § 10.13 List of Migratory Birds.

(a) *Legal authority for this list.* The Migratory Bird Treaty Act (MBTA) in 16 U.S.C. 703-711, the Fish and Wildlife Improvement Act of 1978, 16 U.S.C. 712, and 16 U.S.C. 742a-j. The MBTA implements Conventions between the United States and four neighboring countries for the protection of migratory birds, as follows:

(1) *Canada:* Convention for the Protection of Migratory Birds, August 16, 1916, United States-Great Britain (on behalf of Canada), 39 Stat. 1702, T.S. No. 628, as amended;

(2) *Mexico:* Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-United Mexican States (=Mexico), 50 Stat. 1311, T.S. No. 912, as amended;

(3) *Japan:* Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and Their Environment, March 4, 1972, United States-Japan, 25 U.S.T. 3329, T.I.A.S. No. 7990; and

(4) *Russia:* Convention for the Conservation of Migratory Birds and Their Environment, United States-Union of Soviet Socialist Republics (=Russia), November 26, 1976, 92 Stat. 3110, T.I.A.S. 9073, 16 U.S.C. 703, 712.

(b) *Purpose of this list.* The purpose is to inform the public of the species protected by regulations designed to enforce the terms of the MBTA. These regulations, found in parts 10, 20, and 21 of this chapter, cover most aspects of the taking, possession, transportation,

sale, purchase, barter, exportation, and importation of migratory birds.

(c) *What species are protected as migratory birds?* Species protected as migratory birds are listed in two formats to suit the varying needs of the user: Alphabetically in paragraph (c)(1) of this section and taxonomically in paragraph (c)(2) of this section. Taxonomy and nomenclature generally follow the 7th edition of the American Ornithologists' Union's *Check-list of North American birds* (1998, as amended through 2007). For species not treated by the AOU *Check-list*, we generally follow Monroe and Sibley's *A World Checklist of Birds* (1993).

(1) *Alphabetical listing.* Species are listed alphabetically by common (English) group names, with the scientific name of each species following the common name. It is possible that alphabetical listing by common group names may create confusion in those few instances in which the common (English) name of a species has changed. The species formerly known as the Falcated Teal, for example, is now known as the Falcated Duck. To prevent confusion, the alphabetical list has two entries for Falcated Duck: "DUCK, Falcated" and "[TEAL, Falcated (see DUCK, Falcated)]." Other potential ambiguities are treated in the same way.

ACCENTOR, Siberian, *Prunella montanella*  
 AKEKEE, *Loxops caeruleirostris*  
 AKEPA, *Loxops coccineus*  
 AKIALOA, Greater, *Hemignathus ellisianus*  
 AKIAPOLAAU, *Hemignathus munroi*  
 AKIKIKI, *Oreomystis bairdi*  
 AKOHEKOHE, *Palmeria dolei*  
 ALAUAHIO, Maui, *Paroreomyza montana*  
     Oahu, *Paroreomyza maculata*  
 ALBATROSS, Black-browed, *Thalassarche melanophris*  
     Black-footed, *Phoebastria nigripes*  
     Laysan, *Phoebastria immutabilis*  
     Light-mantled, *Phoebastria palpebrata*  
     Short-tailed, *Phoebastria albatrus*  
     Shy, *Thalassarche cauta*  
     Wandering, *Diomedea exulans*  
     Yellow-nosed, *Thalassarche chlororhynchos*  
 ANHINGA, *Anhinga anhinga*  
 ANI, Groove-billed, *Crotophaga sulcirostris*  
     Smooth-billed, *Crotophaga ani*  
 AMAKIHI, Hawaii, *Hemignathus virens*  
     Kauai, *Hemignathus kauaiensis*  
     Oahu, *Hemignathus flavus*  
 ANIANIAU, *Magnumma parva*  
 APAPANE, *Himatione sanguinea*  
 AUKLET, Cassin's, *Ptychoramphus aleuticus*